

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 30, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMIE M., O/B/O, M.E.M., A
MINOR CHILD,

Plaintiff,

v.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:19-CV-03182-RHW

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND REMANDING
FOR FURTHER PROCEEDINGS**

Before the Court are the parties' cross-motions for summary judgment, ECF Nos. 11 & 13. Plaintiff brings this action on behalf of her minor child, M.E.M., seeking judicial review pursuant to 42 U.S.C. § 1383(c)(3) of the Commissioner of Social Security's final decision, which found that M.E.M. was not eligible for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C. §1381-1383f. AR 1-4, 33-50. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth below, the Court **GRANTS, in part,** Plaintiff's Motion for Summary

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND REMANDING FOR FURTHER PROCEEDINGS ~ 1**

1 Judgment, **DENIES** Defendant's Motion for Summary Judgment, and **REMANDS**
2 the matter back to the Commissioner for additional proceedings.

3 **I. Jurisdiction**

4 On January 26, 2016, Plaintiff filed an application for Supplemental Security
5 Income on behalf of M.E.M. AR 105. She alleged a disability onset date of June
6 1, 2015. AR 237. The application was initially denied on April 20, 2016, AR 132-
7 34, and on reconsideration on August 17, 2016, AR 141-43.

8 Administrative Law Judge ("ALJ") Tom L. Morris held a hearing on
9 December 8, 2017 and heard testimony from Plaintiff and M.E.M. AR 37-75. The
10 ALJ held a supplemental hearing on March 14, 2018 and took the testimony of
11 medical expert Robert Pelc, Ph.D. AR 76-96. On August 1, 2018, the ALJ issued
12 a decision finding M.E.M. ineligible for disability benefits. AR 10-23. The
13 Appeals Council denied Plaintiff's request for review on June 13, 2019. AR 1-5.
14 Plaintiff sought judicial review by this Court on August 9, 2019. ECF No. 1.
15 Accordingly, Plaintiff's claims are properly before this Court pursuant to 42 U.S.C.
16 §§ 405(g), 1383(c).

17 **II. Sequential Evaluation Process**

18 To qualify for Title XVI Supplement Security Income benefits, a child under
19 the age of eighteen must have "a medically determinable physical or mental
20 impairment, which results in marked and severe functional limitations, and which

1 can be expected to result in death or which has lasted or can be expected to last for
2 a continuous period of not less than 12 months.” 42 U.S.C. § 1382c(a)(3)(C)(i).
3 The regulations provide a three-step process to determine whether a claimant
4 satisfies the above criteria. 20 C.F.R. § 416.924(a). First, the ALJ must determine
5 whether the child is engaged in substantial gainful activity. 20 C.F.R. §
6 416.924(b). Second, the ALJ considers whether the child has a “medically
7 determinable impairment(s) that is severe,” which is defined as an impairment that
8 causes “more than minimal functional limitations.” 20 C.F.R. § 416.924(c).
9 Finally, if the ALJ finds a severe impairment, the ALJ must then consider whether
10 the impairment “medically equals” or “functionally equals” a disability listed in the
11 “Listing of Impairments” (listings). 20 C.F.R. § 416.924(c)-(d).

12 If the ALJ finds that the child’s impairment or combination of impairments
13 does not meet or medically equal a listing, the ALJ must determine whether the
14 impairment or combination of impairments functionally equals a listing. 20 C.F.R.
15 § 416.926a(a). The ALJ’s functional equivalence assessment requires the ALJ to
16 evaluate the child’s functioning in six “domains.” These six domains, which are
17 designed “to capture all of what a child can or cannot do,” are as follows:

- 18 (1) Acquiring and using information;
- 19 (2) Attending and completing tasks;
- 20 (3) Interacting and relating with others;

1 (4) Moving about and manipulating objects;

2 (5) Caring for self; and

3 (6) Health and physical well-being.

4 20 C.F.R. § 416.926a(b)(1)(i)-(vi). A child's impairment will be deemed to
5 functionally equal a listed impairment if the child's condition results in a "marked"
6 limitations in two domains, or an "extreme" limitation in one domain. 20 C.F.R. §
7 416.926a(a). An impairment is a "marked limitation" if it "interferes seriously
8 with [a person's] ability to independently initiate, sustain, or complete activities."
9 20 C.F.R. § 416.926a(e)(2)(i). By contrast, an "extreme limitation" is defined as a
10 limitation that "interferes very seriously with [a person's] ability to independently
11 initiate, sustain, or complete activities." 20 C.F.R. § 416.926a(e)(3)(i).

12 III. Standard of Review

13 A district court's review of a final decision of the Commissioner is governed
14 by 42 U.S.C. § 405(g). 42 U.S.C. § 1383(c)(3). The scope of review under §
15 405(g) is limited, and the Commissioner's decision will be disturbed "only if it is
16 not supported by substantial evidence or is based on legal error." *Hill v. Astrue*,
17 698 F.3d 1153, 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence
18 means "more than a mere scintilla but less than a preponderance; it is such relevant
19 evidence as a reasonable mind might accept as adequate to support a conclusion."
20 *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997) (quoting *Andrews v.*

1 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted).

2 In determining whether the Commissioner’s findings are supported by substantial
3 evidence, “a reviewing court must consider the entire record as a whole and may
4 not affirm simply by isolating a specific quantum of supporting evidence.”

5 *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock*
6 *v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989)).

7 In reviewing a denial of benefits, a district court may not substitute its
8 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.
9 1992). “The court will uphold the ALJ’s conclusion when the evidence is
10 susceptible to more than one rational interpretation.” *Tommasetti v. Astrue*, 533
11 F.3d 1035, 1038 (9th Cir. 2008). Further, a district court will not reverse an ALJ’s
12 decision on account of an error that is harmless. *Id.* An error is harmless where it
13 is “inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.*
14 (quotation and citation omitted). The burden of showing that an error is harmful
15 generally falls upon the party appealing the ALJ’s decision. *Shinseki v. Sanders*,
16 556 U.S. 396, 409-10 (2009).

17 **IV. Statement of Facts**

18 The facts of the case are set forth in detail in the transcript of proceedings
19 and only briefly summarized here. M.E.M. was six years old at the date of
20 application. AR 237. Plaintiff alleged that M.E.M. had the following conditions:

1 panic attacks; attention deficit hyperactivity disorder (ADHD) with combined
2 subtype; attention deficit disorder (ADD); and anxiety. AR 270. M.E.M. was in
3 the first grade at the time of application and was not in special education. AR 273.
4 Plaintiff reported that M.E.M. had never worked. AR 273.

5 **V. The ALJ's Findings**

6 The ALJ determined that M.E.M. was not under a disability within the
7 meaning of the Act from the date of application, January 26, 2016, through the date
8 of the decision. AR 10-23.

9 **At step one**, the ALJ found that M.E.M. had not engaged in substantial
10 gainful activity since the date of application. AR 13 (citing 20 C.F.R. §§
11 416.924(b), 416.1571 *et seq.*).

12 **At step two**, the ALJ found that M.E.M. had the following severe
13 impairments: ADD/ADHD; and anxiety disorders. AR 13 (citing 20 C.F.R. §
14 416.924(c)).

15 **At step three**, the ALJ found that M.E.M. did not have an impairment or
16 combination of impairments that met or medically equaled the severity of one of
17 the listed impairments in 20 C.F.R. § 404, Subpt. P, App. 1. AR 13 (citing 20
18 C.F.R. §§ 416.924, 416.925, 416.926). The ALJ found that M.E.M. did not have
19 an impairment or combination of impairments that functionally equaled the
20 severity of the listings. AR 14 (citing 20 C.F.R. §§ 416.924(d), 416.926a).

1 Specifically, the ALJ found that M.E.M. had a “less than marked” limitation in
2 acquiring and using information, attending and completing tasks, interacting and
3 relating with others, and the ability to care for herself and “no limitation” in
4 moving about and manipulating objections and health and physical well-being.
5 AR 17-22.

6 The ALJ found that M.E.M. had not been disabled, as defined in the Act,
7 since January 26, 2016, the date of application. AR 22 (citing 20 C.F.R. §
8 416.924(a)).

9 VI. Issues for Review

10 Plaintiff argues that the Commissioner’s decision is not free of legal error
11 and not supported by substantial evidence. Specifically, she argues that: (1) the
12 Appeals Council erred by failing to exhibit relevant new evidence; (2) the ALJ
13 erred by not properly addressing Plaintiff’s testimony; and (3) the ALJ erred by
14 not properly assessing the functional domains. ECF No. 11.

15 VII. Discussion

16 A. New Evidence

17 Plaintiff argues that the Appeals Council was required to consider the
18 evidence submitted to it after the ALJ’s decision, and the failure to do so was an
19 error. ECF No. 11 at 4-6.

20 Following an unfavorable decision by an ALJ, a claimant may request that

1 the Appeals Council review the decision. 20 C.F.R. § 416.1467. “The Appeals
2 Council may deny or dismiss the request for review, or it may grant the request and
3 either issue a decision or remand the case to an administrative law judge.” *Id.* The
4 Appeals Council “will review a case . . . if [s]ubject to paragraph (b) of this
5 section, the Appeals Council receives additional evidence that is new, material, and
6 relates to the period on or before the date of the hearing decision, and there is a
7 reasonable probability that the additional evidence would change the outcome of
8 the decision.” 20 C.F.R. § 416.1470(a)(5). Paragraph (b) states the Appeals
9 Council will only consider additional evidence under paragraph (a)(5) if a claimant
10 shows good cause for not informing the agency or submitting the evidence prior to
11 the ALJ hearing as required in 20 C.F.R. § 416.1435. 20 C.F.R. § 416.1470(b).

12 Following the ALJ’s August 1, 2018 decision denying benefits, M.E.M.
13 requested review of the decision by the Appeals Council. AR 228. Seven
14 additional pages of evidence was submitted to the Appeals Council, including a
15 Domain Statement for Child from Riya Hutton, M.E.M.’s counselor, dated March
16 23, 2018, AR 30-32, Domain Statement for child from Dawn Dick, M.E.M.’s
17 teacher, dated April 18, 2018, AR 33-35, and treatment records from Lee Moore,
18 MSN, ARNP dated November 17, 2016, AR 36. The Appeals Council denied the
19 request for review and did not exhibit the newly submitted evidence, stating that
20 “[w]e find this evidence does not show a reasonable probability that it would

1 change the outcome of the decision. We did not exhibit this evidence.” AR 2.

2 The Ninth Circuit has held that district courts do not have jurisdiction to
3 review a decision of the Appeals Council denying a request for review of an ALJ’s
4 decision because the Appeals Council decision is a non-final agency action.

5 *Brewes v. Comm’r of Soc. Sec. Admin.*, 682 F.3d 1157, 1161 (9th Cir. 2012) *citing*
6 *Taylor v. Comm’r of Soc. Sec. Admin.*, 659 F.3d 1228, 1231 (9th Cir. 2011). When
7 the Appeals Council denies a request for review, the ALJ’s decision becomes the
8 final decision of the Commissioner and the district court reviews the ALJ’s
9 decision for substantial evidence based upon the record as a whole. *Id.* at 1161-62.

10 “[T]he administrative record includes evidence submitted to and considered by the
11 Appeal Council.” *Id.* at 1162. When the Appeals Council fails to “consider”
12 additional evidence that meets the requirements set forth in 20 C.F.R. §
13 416.1470(b), remand to the ALJ is appropriate. *Taylor*, 659 F.3d at 1233.

14 Therefore, whether or not the Appeals Council “considered” new evidence dictates
15 whether or not a remand is appropriate. *See Brewes*, 682 F.3d at 1162 (“the final
16 decision of the Commissioner includes the Appeals Council’s denial of review, and
17 the additional evidence considered by that body is ‘evidence upon which the
18 findings and decision complained of are based’”); *see Amor v. Berryhill*, 743 F.
19 App’x 145, 146 (9th Cir. 2018) (“here the Appeals Council only looked at the
20 evidence, and determined it did not meet the standard for consideration,” and

1 therefore, “the new evidence did not become part of the record, and we may not
2 consider it”).

3 Here, the Appeals Council did not address the good cause requirement of 20
4 C.F.R. § 416.1470(b). AR 2. The evidence submitted was new, as it was not
5 elsewhere in the record. It was material as it specifically addressed M.E.M.’s
6 functional domains. It relates to the period before the hearing decision, as all the
7 evidence predates the ALJ’s decision. The only part of 20 C.F.R. §
8 416.1470(a)(5)-(b) that the Appeals Council discussed was that the evidence did
9 “not show a reasonable probability that it would change the outcome of the
10 decision.” AR 2.

11 This Court joins others in finding that it is not clear how the Appeals
12 Council determined that the new evidence would not impact the outcome of the
13 ALJ’s decision while simultaneously not considering it and not associating it with
14 the record. *McLaughlin v. Saul*, No. 1:18-cv-00967-SKO, 2019 WL 3202806, at
15 *5 (E.D. Cal. July 16, 2019) *citing Deliny S. v. Berryhill*, No. CV 17-06328-DFM,
16 2019 WL 1259410, at *1 (C.D. Cal. Mar. 19, 2019) and *Mayeda-Williams v.*
17 *Comm’r of Soc. Sec. Admin.*, No. 18-0009-HRH, 2019 WL 157918, at *5 (D. Ak.
18 Jan. 10, 2019); *Lena J. v. Comm’r of Soc. Sec. Admin.*, No. C18-6007-RLB-BAT,
19 2019 WL 3291039, at *3 (W.D. Wash. July 1, 2019). Therefore, the Appeals
20 Council should have exhibited the evidence as part of the administrative record.

1 Nonetheless, while the records are not assigned an exhibit number, they are
2 incorporated with the administrative record filed before this Court. *See* ECF No. 8.

3 The Court must now consider whether the ALJ’s decision is supported by
4 substantial evidence considering the record as a whole, including the records
5 submitted to the Appeals Council.

6 **B. Plaintiff’s Statements**

7 Plaintiff challenges the ALJ’s treatment of her statements. ECF No. 11 at 6-
8 12. The ALJ summarized Plaintiff’s statements as she “alleged difficulty
9 maintaining focus in the classroom and staying on task.” AR 15. He then found
10 that some of the alleged mental limitations including lack of focus and attention
11 were reasonable given the severe impairments of ADD/ADHD, but the degree of
12 symptoms exhibited could partially be attributed to medication non-compliance,
13 which was within Plaintiff’s control. AR 16. The ALJ then stated that “Function
14 reports completed by the claimant’s mother on the claimant’s behalf have also
15 been considered (1E, 2E). They contain allegations that have been addressed in
16 this decision. They are not third-party report[s] because [Plaintiff] was making
17 statements on the minor claimant’s behalf.” AR 16.

18 Plaintiff is the parent of the claimant child. The child testified at the
19 December 8, 2017 hearing regarding her friends and what she enjoyed at school.
20 Tr. 58-71. Social Security Ruling (S.S.R.) 95-5p states that “in the case of an

1 individual under age 18 who is unable to adequately describe his or her symptoms,
2 the description of the symptom(s) given by the person who is most familiar with
3 the individual, such as a parent, other relative, or guardian, will be accepted as a
4 statement of the individual's symptoms." Here, the ALJ appears to conclude that
5 while M.E.M. testified at the hearing, she was not able to describe her symptoms
6 and, therefore, relied on Plaintiff's statements as those of M.E.M. AR 16.

7 Plaintiff accurately argues that since the ALJ accepted Plaintiff's statements
8 as those of M.E.M., the specific, clear and convincing standard set forth in
9 *Garrison v. Colvin* applies. ECF No. 11 at 8 *citing* 759 F.3d 995, 1014-15 (9th
10 Cir. 2014) (absent evidence of malingering the ALJ can reject a claimant's
11 testimony about the severity of her symptom only by offering specific, clear and
12 convincing reasons for doing so). In contrast, if Plaintiff's statements are viewed
13 as those of a family member, then the ALJ was only required to find reasons
14 germane to her statements for rejecting them. *Dodrill v. Shalala*, 12 F.3d 915, 919
15 (9th Cir. 1993). The Court will not make a determination because the ALJ's
16 conclusion that M.E.M.'s degree of symptoms would have increased her functional
17 capacity by controlling her symptoms was not supported by substantial evidence.

18 The ALJ may properly rely on "unexplained or inadequately explained
19 failure to seek treatment or to follow a prescribed course of treatment" when
20 assessing the reliability of a claimant's statements. *Tommasetti*, 533 F.3d at 1039.

1 However, the ALJ must consider why the claimant failed to follow the prescribed
2 treatment. S.S.R. 16-3p (“We will not find an individual’s symptoms inconsistent
3 with the evidence in the record on this basis without considering possible reasons
4 he or she may not comply with treatment or seek treatment consistent with the
5 degree of his or her complaints.”). Here, the ALJ cited to Dr. Brown’s note that
6 Plaintiff did not want M.E.M. on the medications at school because of emotional
7 lability with the medications. AR 16 *citing* 6F/7. However, the ALJ’s citation is
8 inaccurate. Dr. Brown’s opinion is located on page seven of Exhibit 6A. AR 122.
9 Despite the incorrect citation, the ALJ’s reliance on Dr. Brown’s comment does
10 not reflect the record as a whole.

11 A review of the record as a whole demonstrates that Plaintiff consistently
12 reported issues with side effects of medications, and she continued to seek
13 medication intervention to address the ongoing symptoms. In October of 2015,
14 Plaintiff reported only giving M.E.M. medications about half of the time because
15 she was concerned with anger and tearfulness. AR 384. The provider changed the
16 medications to a combination of short-acting and delayed release doses, called
17 Ritalin LA, that would last longer to address the reported problems. AR 385.
18 However, M.E.M.’s health insurance would not cover the combination of
19 medications. AR 386. Instead, she was put on Metadate CD 10 mg that Plaintiff
20 felt was causing emotional lability, and was she reported giving it to M.E.M. at the

1 follow up appointment in February of 2016. *Id.* The provider then prescribed
2 Adderall XR 5 mg. *Id.* In June of 2016, Plaintiff reported that medication was
3 unhelpful for treating the ADHD symptoms. AR 400. In August of 2016, M.E.M.
4 was prescribed methylphenidate CD 10 mg for her ADHD. AR 522. A couple
5 weeks later, M.E.M. stated she was having difficulty taking her pill out of fear of
6 the side effects that the provider had reviewed with her. AR 523. By early
7 September of 2016, M.E.M. stated she had been taking the medication since school
8 started, but did not notice any difference. AR 525. This was confirmed by
9 Plaintiff. AR 527. By late September, Plaintiff reported that she had been
10 inconsistent with giving M.E.M. the medication, but had not seen a change in
11 behavior except that she talks a lot on the days she takes the medication. AR 528.
12 By November of 2016, Plaintiff reported giving M.E.M. the medication more
13 consistently and noted an improvement in overall functioning, but that the teacher
14 had mentioned trouble concentrating at school. AR 532. By December of 2016,
15 M.E.M. had developed a grimace that Plaintiff stated she had noticed since M.E.M.
16 started the newest medication. AR 537. By January of 2017, M.E.M. reported that
17 other kids at school were noticing the grimace. AR 540. Her medication was
18 changed again to atomoxetine. AR 542. At the next appointment, Plaintiff
19 reported that M.E.M. complained of stomach aches and lack of appetite on the new
20 medication. AR 544. M.E.M. was put on Focalin XR. AR 546. Starting the

1 Focalin was delayed by insurance not approving it initially. AR 547. In March of
2 2017, the Focalin dosage was increased. AR 557. By the beginning of school in
3 the fall of 2017, M.E.M. was restarted on the Focalin without side effects. AR
4 566, 569. The ALJ's determination discounting Plaintiff's testimony due to
5 medication noncompliance is not supported in the record. Instead, the record
6 demonstrates that Plaintiff worked with providers through multiple medications
7 with side effects before finding one that worked. Therefore, the ALJ's
8 determination is not supported by substantial evidence and the case is remanded
9 for the ALJ to properly address both the statements of Plaintiff and those of
10 M.E.M.

11 Plaintiff also addresses the ALJ's general assertion that the symptom
12 statements are not supported in the record. ECF No. 11 at 11-12. The ALJ found
13 that "the claimant's" "statements concerning the intensity, persistence and limiting
14 effects of these symptoms are not entirely consistent with the medical evidence and
15 other evidence in the record for the reasons explained in this decision." AR 14.
16 The ALJ then summarized the testimony by Dr. Pelc and how the longitudinal
17 evidence supported Dr. Pelc's opinion. AR 15. In doing so, the ALJ failed to state
18 what evidence undermined whose statements. Therefore, without more specific,
19 the Court cannot address this as a reason for rejecting either Plaintiff's or M.E.M.'s
20 statements. Furthermore, the Ninth Circuit has specifically held that a generic non-

1 credibility finding followed by a summary of the medical evidence does not meet
2 the “specific” portion of the “specific, clear and convincing” standard. *Brown-*
3 *Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015).

4 In conclusion, the case is remanded for the ALJ to properly address
5 Plaintiff’s statements and M.E.M.’s statements.

6 **C. Functional Domains**

7 Plaintiff also argues that the ALJ erred in assessing the functional domes.
8 ECF No. 11 at 12-21.

9 Here, the medical evidence to the Appeals Council includes two Domain
10 Statement for Child forms. AR 30-35. As addressed above, these forms must be
11 used when determining whether the ALJ’s determination is supported by the record
12 as a whole. Because the case is being remanded for the ALJ to properly address
13 Plaintiff’s statements, the ALJ will also readdress the functional domains with
14 these forms as part of the record.

15 **VIII. Conclusion**

16 The decision whether to remand for further proceedings or reverse and
17 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,
18 888 F.2d 599, 603 (9th Cir. 1989). Reversing and awarding benefits is appropriate
19 when (1) the record has been fully developed and further administrative
20 proceedings would serve no useful purpose; (2) the ALJ has failed to provide

1 legally sufficient reasons for rejecting evidence, whether claimant testimony or
2 medical opinion; and (3) if the improperly discredited evidence were credited as
3 true, the ALJ would be required to find the claimant disabled on remand, the Court
4 remands for an award of benefits. *Revels v. Berryhill*, 874 F.3d 648, 668 (9th Cir.
5 2017). But where there are outstanding issues that must be resolved before a
6 determination can be made, and it is not clear from the record that the ALJ would
7 be required to find a claimant disabled if all the evidence were properly evaluated,
8 remand is appropriate. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir.
9 2004); *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).

10 In this case, the ALJ must consider the evidence submitted to the Appeals
11 Council on remand. The ALJ will readdress the statements made by M.E.M. and
12 Plaintiff and assess the functional domains in accord with the new evidence and the
13 statements. Additionally, the ALJ will supplement the record with any outstanding
14 evidence.

15 Accordingly, **IT IS ORDERED:**

16 1. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is **GRANTED**,
17 **in part**.

18 2. Defendant's Motion for Summary Judgment, **ECF No. 13**, is **DENIED**.

19 3. This matter is **REMANDED** to the Commissioner for further
20 proceedings consistent with this Order.

1 4. Judgment shall be entered in favor of **Plaintiff** and the file shall be
2 **CLOSED.**

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
4 Order, forward copies to counsel and **close the file.**

5 **DATED** March 30, 2021.

6
7 *s/ Robert H. Whaley*
8 ROBERT H. WHALEY
9 Senior United States District Judge
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